



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 609**

IN THE MATTER OF ERNEST NUGENT

DISPOSITION AGREEMENT

The State Ethics Commission ("the Commission") and Ernest Nugent ("Nugent") enter into this Disposition Agreement ("Agreement") pursuant to Section 5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented-to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On September 15, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Nugent. The Commission has concluded its inquiry and, on May 22, 2000, found reasonable cause to believe that Nugent violated G.L. c. 268A.

The Commission and Nugent now agree to the following findings of fact and conclusions of law:

1. Nugent is the Worthington highway superintendent, a position to which he was appointed by the Worthington board of selectmen in 1994. Nugent's municipal position is full-time and salaried.

2. As highway superintendent, Nugent manages the Worthington Highway Department ("the Highway Department"). The principal function of the Highway Department is the maintenance of town roads in Worthington.

3. The Highway Department uses a woodchipper to dispose of trees and tree branches that fall on or otherwise interfere with roads in Worthington. For several years starting in 1994, the Highway Department rented a woodchipper from Nugent's brother Albert Nugent ("Albert") at a cost of \$150 per day. The selectmen awarded Albert the rental contract based on his submitting the lowest bid, and directed the Highway Department to rent the chipper from Albert. Nugent, as highway superintendent, determined on a day-to-day basis when the woodchipper was needed and rented it from Albert pursuant to the board of selectmen's direction. On average, the Highway Department rented Albert's woodchipper about thirty days per year.

4. In 1996, the Commission's Enforcement Division, having learned of Nugent's involvement in the rental of the woodchipper from Albert, wrote two letters to Nugent (on July 25th and September 3rd) advising him of how the conflict of interest law might apply to his situation. The July 25, 1996 letter advised Nugent in relevant part,

In the future, if any matter comes before you which involves the interest of your immediate family members, you should either completely abstain from any participation in the matter, or, if you deem it essential for you to participate, you should first obtain [a written exemption]. Failure to comply with the law can result in civil prosecution by the Commission which is empowered to impose a fine of up to \$2,000 for each violation of the conflict of interest law.

The September 3, 1996 letter further advised Nugent that if he wished to participate in a matter in which his immediate family member had a financial interest,

you must first advise your appointing authority of the nature and circumstances of the particular matter and make full disclosure of the financial interests. Your appointing authority may make a written determination that the interest is not so substantial as to be deemed likely to affect the integrity of the services the municipality may expect from you. Such disclosure and any written authorization must be filed with the town clerk.

5. One of Nugent's duties as Highway Superintendent each year is to prepare and submit to the town finance committee and selectmen an annual budget request for the Highway Department.

6. Sometime prior to 1998, Nugent decided to recommend that the Highway Department should buy a woodchipper rather than continue to rent. Also sometime prior to 1998, Albert expressed to Nugent an interest in selling his woodchipper to the town.

7. On March 3, 1998, Nugent appeared before the selectmen and finance committee, meeting jointly, and presented the Highway Department budget request for fiscal year 1999. The budget, which Nugent had prepared, included a request for \$10,000 to purchase a used woodchipper.

8. On March 3, 1998, the selectmen and finance committee decided to fund the purchase of a used woodchipper, as requested by Nugent, using funds from the Rolland North Cemetery Fund. This funding was consented to by the cemetery commissioner, who was present at the March 3, 1998 meeting, and required the approval of the town meeting.

9. In May 1998, the Worthington town meeting voted to appropriate \$10,000 from the Rolland North Cemetery Fund to purchase a used woodchipper.

10. Following the May 1998 town meeting, Worthington Selectman and Chief Procurement Officer Ryan Neuhauser ("Neuhauser") took charge of preparing an invitation to bid for the town's purchase of a used woodchipper. At Neuhauser's request, Nugent provided Neuhauser with input on the specifications of the woodchipper to be included in the invitation to bid. In response to Neuhauser's inquiry, Nugent told Neuhauser that the town should purchase a woodchipper like the one rented from Albert, and that Albert's woodchipper worked well. Nugent further told Neuhauser, in substance, that the invitation to bid should specify that the woodchipper should have a six-cylinder, gasoline-powered engine and be self-feeding, towable and able to handle logs up to twelve inches in diameter. After Neuhauser had drafted the invitation to bid, Nugent read it and confirmed that its specifications for the woodchipper met the Highway Department's needs.

11. The invitation to bid was made public by Chief Procurement Officer Neuhauser on June 3, 1998. The invitation specified, in relevant part, that the town was seeking a woodchipper which was "self contained, 12 [inch] self-feeding, towable with road legal lighting ... 1987 model year or newer with 1500 hours or less on the hour meter" and "powered by a six cylinder gasoline-fueled engine."

12. After the invitation to bid was made public, Nugent spoke with his brother Albert, a heavy equipment dealer (Morbar of New England) and two other individuals and informed each of the woodchipper invitation to bid.

13. Subsequently, Albert submitted a sealed bid offering to sell the town for \$10,000 a “1989 ‘Eager Beaver’ woodchipper with 1200 hours on the meter, 6 cylinder gas engine, 12 [inch] self-feeding, towable with legal road lighting.” The equipment dealer also submitted a sealed bid offering to sell the town six different woodchippers, ranging in price from \$2,000 to \$19,500, none of which met the specifications of the invitation to bid. No other bids were submitted.

14. The two sealed bids were opened at a board of selectmen’s meeting on June 30, 1998, and taken under advisement. Nugent did not participate in the bid-opening. At a board of selectmen’s meeting on July 7, 1998, Neuhauser recommended that the town purchase the woodchipper from Albert for \$10,000. Nugent did not participate in the recommendation to accept Albert’s bid. The selectmen voted unanimously to approve the purchase of the woodchipper from Albert.

15. Section 19 of G.L. c. 268A, except as permitted by paragraph (b) of that section, prohibits a municipal employee from participating as such in any particular matter in which to his knowledge a member of his immediate family has a financial interest.

16. As highway superintendent, Nugent was at all times here relevant a municipal employee as that term is defined in G.L. c. 268A, §1(g).

17. Nugent’s brother Albert is a member of Nugent’s immediate family as defined in G.L. c. 268A, §1(e).

18. Worthington’s decision to purchase a used woodchipper, as described in the June 3, 1998 invitation to bid, was a particular matter (hereinafter “the particular matter”).¹

19. Albert had a financial interest² in the particular matter given that Albert had been renting his woodchipper to the town for several years. In addition, Albert had an expressed interest in selling his woodchipper to the town.

20. Nugent participated³ in the particular matter as highway superintendent by requesting that the town purchase a used woodchipper and by recommending the purchase for up to \$10,000 of a used woodchipper with a 12-inch capacity, a six-cylinder gasoline-powered engine and a self-feeding capability. In addition, Nugent participated in the particular matter as highway superintendent, by reviewing the invitation to bid specifications, stating his opinion that the woodchipper rented from Albert worked well, and personally seeking bids from Albert and a heavy equipment dealer.

21. When Nugent participated in the particular matter, Nugent knew that his brother Albert had a financial interest in the particular matter as Nugent knew that his brother was currently renting his woodchipper to the town. In addition, Nugent knew that Albert was interested in selling his woodchipper to the town. Accordingly, Nugent participated as highway superintendent in a particular matter in which to his knowledge a member of his immediate family had a financial interest. In so doing, Nugent violated §19.

22. As set forth above in paragraph 4, in 1996 the Commission’s Enforcement Division informed Nugent that his participation in a matter affecting the financial interest of a member of

his immediate family would violate §19 and advised him to abstain from participating in any such matter, unless he first obtained a §19(b)(1) exemption. Section 19(b)(1) provides that a municipal employee participating in a particular matter in which a family member has to his knowledge a financial interest does not violate §19 if the municipal employee first advises his appointing authority of the nature and circumstances of the particular matter and makes full disclosure of the financial interest and receives in advance a written determination by the appointing authority that the interest is not so substantial as to be deemed likely to affect the integrity of the services the municipality may expect from the employee.

23. At the time Nugent participated in the particular matter as described above, Nugent's appointing authority was aware that Albert was Nugent's brother and had been renting his woodchipper to the town. The selectmen were thus aware that Nugent was participating as highway superintendent in a particular matter in which a member of his immediate family had a financial interest. Nugent did not, however, seek and obtain a §19(b)(1) exemption from the selectmen, prior to participating as highway superintendent in the particular matter. Thus, Nugent's participation in that matter was not exempted from §19.^{4/}

In view of the foregoing violation of G.L. c. 268A by Nugent, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Nugent:

(1) that Nugent pay to the Commission the sum of one thousand dollars (\$1,000.00) as a civil penalty for violating G.L. c. 268A, §19.

(2) that Nugent waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: September 27, 2000

^{1/}"Particular matter" means any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{2/}"Financial interest" means any economic interest of a particular individual that is not shared with a substantial segment of the population of the municipality. See *Graham v. McGrail*, 370 Mass. 133, 345 N.E. 2d 888 (1976). This definition has embraced private interests, no matter how small, which are direct, immediate or reasonably foreseeable. See *EC-COI-84-98*. The interest can be affected in either a positive or negative way. See *EC-COI-84-96*.

^{3/}"Participate" means to participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval,

disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).

⁴The formal disclosure and written determination requirements of the §19(b)(1) exemption are not mere technicalities. They protect the public interest from potentially serious harm. As the Commission has stated, “The steps of the disclosure and procedure ... are designed to prevent an appointing authority from making an uninformed, ill-advised or badly motivated decision.” *In re Hanlon*, 1986 SEC 253, 255. Accordingly, the Commission requires strict compliance with the provisions of §19(b)(1) of anyone seeking to be thereby exempted from the prohibitions of §19. See *In re Ling*, 1990 SEC 456, 458-459.